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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,314	06/08/2006	Paul H.F. Merswolke	58342.0013	5263
24629 7590 11/24/2008 DARYL W SCHNURR MILLER THOMSON LLP ACCELERATOR BUILDING 295 HAGEY BLVD., SUITE 300 WATERLOO, ON N2L 6R5 CANADA				
EXAMINER				
WHITE, DWAYNE J				
ART UNIT		PAPER NUMBER		
3745				
MAIL DATE		DELIVERY MODE		
11/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/596,314

**Applicant(s)**

MERSWOLKE ET AL.

**Examiner**

DWAYNE J. WHITE

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-7, 9-11 and 13-15 is/are rejected.  
7) ☒ Claim(s) 8 and 12 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 08 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date 6/8/06  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 1/6, 1/7, 1/9, 1/10, 1/2/6, 1/2/7, 1/2/9, 1/2/10, 1/2/3/6, 1/2/3/7, 1/2/3/9, 1/2/3/10, 4/6, 4/7, 4/9, 4/10, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collard (FR 2,394,689 A1) in view of Schmidt (4,729,716). Collard discloses a turbine powered by wind comprising a rotor 1 on a shaft 2, said rotor having blades 4 extending outward therefrom, said blades being shaped to rotate said shaft when said wind is sufficiently strong, said shaft being rotatably supported on a support that can move said blades in a yaw movement into and out of said wind as said wind changes direction (Page 5, lines 1-5), said turbine having a pitch adjustment mechanism to change a pitch of said blades (page 4, lines 17-19), said shaft having a gear ring 5 concentrically mounted thereon, a plurality of gear rotators 6 mounted to removably contact said ring, said rotators being connected to generators 8, said rotators being constructed to rotate with said ring when said rotators are in contact therewith, thereby driving said energy producing equipment when said wind rotates said blades. The Examiner notes that since the blades are mounted on the hub (note labeled but shown in Figure 1) and the hub is connected to the shaft, it is the position of the Examiner that the hub is between the shaft and the blades. Further it can be seen from figure 1 that posts are extending from the hub on which the blades are mounted and a plurality of spokes extending from the ring to connect the ring to

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the blades and thus support the ring. Collard also discloses the fiction rollers (tires or the like) may be used on the outer surface (the surface parallel with the shaft) of the ring (Page 5, lines 8-12). The Examiner notes that since Collard discloses gears and it is well know that gears are made of metal, it is the position of the Examiner that Collard meets the limitation of the ring and rotators being made of metal. Collard further discloses a controller (page 5, lines 16-17) that controls the number of generators driven by the turbine. Collard does not disclose a controller to control the braking of the turbine.

Schmidt teaches a wind turbine being controlled by a controller 144 that monitors the wind using sensors 146 to control the yaw of the turbine, position of the blades and number of wheels in contact with the ring and the turbine is a variable speed turbine (Column 4, line 53-Column 5, line 2 and Column 6, lines 25-53). Brakes (Column 4, line 30) are provided to stop or slow the turbine. Since both Collard and Schmidt disclose wind turbine of analogous type and it is already well known in the wind turbine art to provide controllers to automate the operation of the wind turbine, it would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the controller of Collard, with the teaches of Schmidt, by providing sensors and brakes to the controller for the purpose of automating the wind turbine's functions.

In regards the claims 13-15, since all of the structure of Collard as modified would perform all of the claims method steps set forth and no step or structure is claimed what would not be met by the modified structure of Collard, it is the position of the Examiner that Collard reads on the method.

Claims 1/5, 1/2/3/5 and 1/4/5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collard (FR 2,394,689 A1) in view of Schmidt (4,729,716). Collard as

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modified by Schmidt discloses all of the claimed subject matter as set forth above except for the turbine only having three blades.

Since Applicant does not disclose that having three blades solves any stated problem, and it is clear that Collard as modified would function equally as well 3 blades, it would be an obvious matter of engineering design choice to have a turbine with 3 blades.

Claims 1/2/11, 1/2/3/11, 1/4/11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collard (FR 2,394,689 A1) in view of Schmidt (4,729,716) in further view of Blakemore (6,951,443). Collard as modified by Schmidt discloses all of the claimed subject matter as set forth above except for the ring having a smaller diameter than the circumference through the tips of the blades.

Blakemore teaches a wind turbine that uses a ring having a smaller diameter than the circumference of the tips of the blades. Since both Collard as modified and Schmidt disclose similar wind turbines, it would have been obvious at the time the invention was made to one of ordinary skill in the art to further modify the ring of Collard, with the teaches of Blakemore, by providing a smaller diameter ring an a matter of engineering design choice.

## CONCLUSION

### *Allowable Subject Matter*

Claims 1/8, 1/2/8, 1/2/3/8, 1/4/8, 1/12, 1/2/12, 1/2/3/12, 1/4/12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DWAYNE J. WHITE whose telephone number is (571)272-4825. The examiner can normally be reached on 7:00 am to 3:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dwayne J White/  
Examiner, Art Unit 3745

DJW